

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MALCOLM WILEY,

Plaintiff,

v.

**NEWARK POLICE DEPARTMENT,
CITY OF NEWARK,
ESSEX COUNTY,
ESSEX COUNTY SHERIFF OFFICE,
NEWARK POLICE OFFICERS JOHN DOES
1-50,**

Defendants.

Civ. No. 16-2530

MEMORANDUM & ORDER

On May 4, 2016, the plaintiff, Malcolm Wiley, filed the original complaint in this action. (ECF no. 1) On July 22, 2016, the City of Newark and the Newark Police Department filed a motion to dismiss the Complaint. In a letter dated October 24, 2016, counsel acknowledged defects in the original complaint, stated that he would withdraw it, and stated his intent to file an amended complaint within 30 days. (ECF no. 8) On November 28, 2016, counsel for the City wrote the court, pointing out that there had been no response to the motion to dismiss, and no amended complaint filed. (ECF no. 10) On December 19, the Court entered a text order requiring that any application to file an amended complaint be filed by January 5, 2017. (ECF no. 11)

On January 5, 2017, plaintiff's counsel filed a motion to amend/correct the complaint. (ECF no. 12) The motion attached a proposed amended complaint, which extensively supplemented and revised the allegations. (ECF no. 12-1) Motions to amend, especially in the early stages of litigation, are granted freely. *See Fed. R. Civ. P. 15.*


The original complaint no longer reflects the plaintiff's wishes as to the claims he is asserting. The motion to dismiss the original complaint, however, remains pending. The motion to amend the complaint is likely to be granted, but in opposing it, defendants will surely file what amounts to a preemptive motion to dismiss.

Rather than adjudicate a motion to dismiss claims that are no longer being pursued, or address the merits of the amended complaint *via* the indirect route of a motion to amend, the court has opted for a practical solution. Accordingly,

IT IS this 24th day of January, 2017,

ORDERED as follows:

1. The motion to dismiss the original Complaint (ECF no. 5) is ADMINISTRATIVELY TERMINATED.
2. The motion for leave to file the Amended Complaint (ECF no. 12) is GRANTED.
3. Defendants shall, within 21 days, answer or move to dismiss the Amended Complaint.


KEVIN MCNULTY
United States District Judge